

# **EXHIBIT 4**

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THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

LORI ANN MORRIS,

Plaintiff,

Vs.

CIVIL ACTION NO.

3:02-CV-962-T

FLORIDA TRANSFORMER,  
EDWARD NEAL THOMPSON, et al.

Defendants.

\* \* \* \* \*

EXCERPT OF THE DEPOSITION OF EDWARD L. ROBINSON,  
taken pursuant to stipulation and agreement  
before Haley A. Phillips, Certified Shorthand  
Reporter and Commissioner for the State of Alabama at  
Large, in the Law Offices of Henry Penick,  
Birmingham, Alabama, on Thursday, June 22, 2006,  
2002, commencing at approximately 10:05 a.m.

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APPEARANCES

FOR THE PLAINTIFF:

Henry Penick, Esq.  
Attorney at Law  
Birmingham, Alabama

6 FOR THE DEFENDANT:  
7 W. Evans Brittain, Esq.  
Richard Broughton, Esq.  
8 Ball, Ball, Matthews & Novak  
2001 Interstate Park Drive  
9 Montgomery, Alabama

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1 STIPULATION

2 It is hereby stipulated and agreed by and  
3 between counsel representing the parties that the  
4 deposition of EDWARD L. ROBINSON is taken pursuant  
5 to the Federal Rules of Civil Procedure and that  
6 said deposition may be taken before Haley A.  
7 Phillips, Certified Shorthand Reporter and  
8 Commissioner for the State of Alabama at Large,  
9 without the formality of a commission, that  
10 objections to questions other than objections as to

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11 the form of the question need not be made at this  
12 time but may be reserved for a ruling at such time  
13 as the said deposition may be offered in evidence  
14 or used for any other purpose by either party  
15 provided for by the Statute.

16 It is further stipulated and agreed by and  
17 between counsel representing the parties in this  
18 case that the filing of said deposition is hereby  
19 waived and may be introduced at the trial of this  
20 case or used in any other manner by either party  
21 hereto provided for by the Statute regardless of  
22 the waiving of the filing of the same.

23 It is further stipulated and agreed by and

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1 between the parties hereto and the witness that the  
2 signature of the witness to this deposition is  
3 hereby waived.

4 \* \* \* \* \*

5 EDWARD L. ROBINSON

6 The witness, after having first been duly sworn to  
7 speak the truth, the whole truth and nothing but  
8 the truth testified as follows:

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1 Q. Was there anything that you read in the  
2 affidavit that you took exception to, in  
3 either Mr. Thompson's or Mr. Tidwell's  
4 affidavits?

5 MR. PENICK: Let me object to the  
6 form of the question until  
7 he's shown the affidavits. He  
8 doesn't have a photographic  
9 memory to remember everything  
10 that they said in their  
11 affidavits.

12 Q. Do you remember anything that you took  
13 exception to?

14 You read them yesterday?

15 A. Yeah. No, I don't remember anything that I  
16 think is misstated or wrong. There may or  
17 may not be. He could have been going more  
18 than 70. He could have been going 65. But  
19 I think Mr. Thompson himself said that he  
20 was outrunning his lights, because he said  
21 I couldn't see the truck in time to stop.  
22 And if you're driving too fast for the  
23 range of your lights, regardless of what's

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1 in the road, you're outrunning your lights.

2 Q. Are you an --

3 A. He made that statement.

4 Q. Are you an expert on the range of  
5 headlights from a Peterbilt?

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6 A. No.

7 Q. Have you done any investigation, research

8 in this case to determine the range of the

9 headlights on the Peterbilt?

10 A. No. But he said he was outrunning them.

11 Q. Where in his affidavit did he say -- You're

12 talking about his statement that he could

13 not see the truck in time to avoid the

14 collision. You've interpreted that to mean

15 he's saying he was, quote, outrunning his

16 lights?

17 A. Right.

18 Q. Have you done -- In this case, have you

19 done any work to determine at what distance

20 away from the Kenworth vehicle that vehicle

21 would have been visible to an oncoming

22 driver of --

23 A. No.

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1 Q. -- a Peterbilt truck?

2 A. No, not -- not for a driver of a Peterbilt

3 nor for this specific overturned truck

4 case.

5 Q. It's your opinion -- Is it your opinion

6 today that any person who fails to avoid

7 hitting an object in the highway at night

8 is outrunning their lights?

9 A. For a stationary object in the highway in

10 front of them, yes, I would say they are.

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11 Q. Is there anybody else that shares that  
12 opinion?

13 A. Not based on the way they drive. But the  
14 statements in the literature, Paul Olson's  
15 book, for example, the Alabama statute all  
16 say that you have your vehicle under  
17 control so that you can avoid or stop for  
18 objects within the range of your lights.

19 Q. Have you ever testified in any other cases  
20 to the contrary?

21 A. I don't recall. I know that we talked  
22 earlier about a truck case with a man who  
23 was wearing dark clothing. But he stepped

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1 out in front of the truck as I recall, so  
2 it wasn't a matter of something that was in  
3 the road and there as a stationary object.

4 Q. Are you aware of any studies or tests done  
5 by anyone with facts similar to this case  
6 to determine the perception/reaction and  
7 avoidability of an accident of this type?

8 A. I'm not familiar with specific pieces of  
9 data in the literature. I'm sure that  
10 Muttart's Drive 3 has some data with some  
11 similarity to this. Since there are  
12 hundreds of data points in his research, if  
13 not thousands -- I think it's in the  
14 thousands. No, I don't -- I don't know  
15 that somebody has put an upside down truck  
16 or an overturned truck on a test strip and

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2 BY MR. PENICK:

9 MR. BROUGHTON: Object to the  
0 form.

12 Q. What is that opinion?

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22 that he could have gone around the Morris  
23 vehicle.

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1 Q. Okay. What is the significance of absence  
2 of skid marks in this case?

3 A. That he either had defective brakes or that  
4 he didn't get on the brakes until very  
5 shortly before the impact. In other words,  
6 he hadn't had his brakes on long enough to  
7 cause the wheels to stop rotating and heat  
8 up the contact with the pavement and leave  
9 marks.

10 MR. PENICK: That's all at this  
11 time.

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